

**Before the National Transportation Safety Board**

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For Release on Delivery  
October 7, 2008

# **January 2, 2008, Victoria, Texas, Motor Coach Accident**

**Statement of  
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Member Hersman and NTSB Staff:

We are pleased to be here today to assist you in examining safety issues related to the January, 2008 Victoria, Texas, motor coach accident. In particular, the issue of Mexico-manufactured buses operating in the United States while not in compliance with Federal Motor Vehicle Safety Standards (FMVSS).

As you know, the FMVSS are set by the National Highway Traffic Safety Administration (NHTSA). In addition, the Federal Motor Carrier Safety Administration (FMCSA) has authority over the safe operation of commercial motor vehicles, including passenger buses that are involved in interstate and foreign commerce.

Over the past 3 years, we have issued nine reports and participated in five congressional hearings covering NHTSA and FMCSA safety programs (see attached list). Our most recent work has focused on issues related to Mexico-domiciled carriers that are presently operating in the United States, or planning to do so under the cross-border trucking provisions of the North American Free Trade Agreement (NAFTA).

We have not examined the importation and registration of foreign passenger buses by United States companies for use in the United States so we cannot provide any insight into those issues. However, our prior work does allow us to comment on three areas: safety inspections of buses at the border, FMCSA's guidance for determining Mexican commercial motor vehicle compliance with FMVSS, and FMCSA's research on the degree to which Mexican commercial vehicles operating in the United States comply with FMVSS. In brief:

- *First, our prior work identified concerns about whether sufficient inspections of passenger buses can be conducted at the southern border. In 2005, we found that insufficient staff prevented FMCSA and state officials from inspecting passenger buses at some southern border crossings and in 2007, we identified a major crossing in Texas where inspections could not be done during high volume holiday periods due to space limitations. Thus, bus carriers could avoid inspections during those periods. In response to our recommendations, FMCSA took action to improve bus inspection plans, but some actions are still underway and will require follow-up by our office.*
- *Second, we reported on the need for further guidance on determining compliance with FMVSS using vehicle identification numbers, and FMCSA subsequently issued guidance applicable to its demonstration program. In*

August 2005, FMCSA issued guidance on determining compliance with FMVSS by using vehicle identification numbers and promised further implementation guidance. We reported in 2007 that further guidance had not been provided and might be needed as vehicle identification numbers were not always entered into the database. FMCSA subsequently issued guidance on the use of software for checking vehicle identification numbers. This guidance applied to Mexico-domiciled carriers participating in the FMCSA cross-border demonstration project. No buses are participating in the current demonstration project.

- *Third, we recently completed work assessing FMCSA's research on the degree to which Mexican commercial vehicles operating in the United States complies with FMVSS.* Of interest to this hearing, the research assumed that the Mexico-manufactured buses operating without an affixed manufacturing label did not comply with FMVSS. This was based on a lack of industry information available to determine whether the vehicles were in compliance when manufactured. The FMCSA sponsored research also provided evidence that most Mexican-owned commercial vehicles sampled while entering the United States, including buses, complied with FMVSS, although we did not find the estimates based on the sample to be statistically valid.

Further details on each area are provided below.

### *Concerns About Sufficient Bus Inspections at the Southern Border*

As part of our review of eight safety criteria related to Mexico-domiciled motor carrier truck and bus operations,<sup>1</sup> we reported in January 2005<sup>2</sup> that the number of Federal and state staff at some designated bus crossings was insufficient to meet the criteria for inspecting buses and for verifying the bus driver's commercial driver's license (CDL). We recommended that FMCSA revise policies, procedures, staffing, and facility plans to make Mexico-domiciled bus coverage consistent with FMCSA policy on vehicle and driver inspections for other Mexico-domiciled commercial vehicles granted long-haul authority. In response, FMCSA worked with United States Customs and Border Protection to identify mutually acceptable inspection procedures and issued the Southern Border Commercial Bus Inspection Plan. The Bus Inspection Plan identified the ports of

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<sup>1</sup> The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (Pub. L. No. 107-87 [2001], Section 350(c), and subsequent appropriation legislation required that the Office of Inspector General (OIG) annually review eight safety-related criteria related to Mexico-domiciled motor carrier truck and bus operations beyond the commercial zones. OIG was called on to verify whether FMCSA had adequate capacity at southern border crossings to conduct a sufficient number of meaningful vehicle safety inspections.

<sup>2</sup> OIG Report Number MH-2005-032, "Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," January 3, 2005.

entry in each of the four southern border states, described their respective bus inspection issues, and identified planned strategies for addressing those issues.<sup>3</sup>

We revisited this issue in August 2007.<sup>4</sup> Based on our observations at a bus crossing in Laredo, Texas, which services an average of 3,000 bus crossings monthly, we noted physical space and capacity limitations that prevented FMCSA and state motor carrier inspectors from conducting bus inspections during high volume holiday periods. As a result, Mexico-domiciled bus carriers that were granted long-haul authority could avoid vehicle or license inspections at this crossing during busy periods. Unfortunately, the Bus Inspection Plan covering this crossing did not identify this important issue. Further, when we surveyed selected inspectors at border crossings, they pointed out other bus inspection items requiring attention, such as the lack of a ramp on which to conduct bus inspections.

FMCSA agreed with our recommendation that it routinely confirm the effectiveness of its Bus Inspection Plan, either by periodically surveying its inspectors or pursuing other means to identify site-specific issues to improve bus inspections. It also provided funding for a review of bus activities and operations at the southern border crossings. The results of that review are due in October 2008. We plan to follow-up on these actions in our next audit.

### *Implementation Issues with Guidance on Ensuring FMVSS Compliance*

In our January 2007 report, we noted that FMCSA proposed rules in March 2002 that would require each commercial motor vehicle operating in interstate commerce in the United States to display a certification label asserting that the vehicle complied with FMVSS, as applicable, when it was built. In August 2005, FMCSA withdrew the proposed rule after determining that it could ensure Mexico motor carriers' compliance with these standards while operating in the United States, without the proposed rule.

Specifically, FMCSA stated that to meet this requirement, it could enforce the already established Federal Motor Carrier Safety Regulations and other policies, as many of the safety regulations are cross-referenced to the FMVSS. FMCSA expected that enforcement would occur during the pre-authority safety audit of Mexico-domiciled motor carriers and their United States-Mexico border crossings and roadside vehicle inspections in the United States.

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<sup>3</sup> Buses are permitted to enter the United States at separate bus crossings and at times when commercial trucks are restricted.

<sup>4</sup> OIG Report Number MH-2007-062, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions," August 6, 2007.

In August 2005, FMCSA issued policy guidance on compliance with FMVSS. It stated that if FMCSA or state inspectors determine that Mexican-domiciled motor carriers are operating vehicles not in compliance with FMVSS, FMCSA may use this information to deny, suspend, or revoke a carrier's operating authority for making a false certification or issue appropriate penalties.

The policy guidance states that for vehicles without certification labels, enforcement officials "should defer to" the vehicle identification number (which identifies the vehicle's model year) to determine whether a vehicle complies with applicable manufacturing standards. It notes FMCSA's determination that most vehicles produced in Mexico beginning in model year 1996 have met applicable manufacturing standards.

Our audit work did not assess FMCSA's rationale for withdrawing the rulemaking, but we identified a problem that hindered full implementation of FMCSA's August 2005 policy guidance. Inspectors were entering Mexico-domiciled motor carriers' vehicle identification numbers into its inspection database only 37 percent of the time. For the remaining 63 percent, either non-related, incomplete or no data were entered into the optional vehicle identification number database field.

After we issued our report in August 2007, FMCSA issued additional guidance in September 2007 to make it mandatory for its inspectors to input the vehicle identification numbers for NAFTA demonstration project participants. Although no buses are participating in the demonstration project, FMCSA recently modified its software to prompt a check of vehicle identification numbers when inspectors record roadside inspection data for all vehicles. We are reviewing the vehicle identification number policies in our follow-up audit on the Implementation of NAFTA Cross-Border Trucking Provisions.

### *FMCSA's Research on the Degree to which Mexican Commercial Vehicles Operating in the United States Comply with FMVSS*

In September 2008,<sup>5</sup> as required by the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users, we reported on the scope and methodology FMCSA used in its review of Canada/Mexico compliance with FMVSS. Based on a review performed under a grant issued to the Texas Transportation Institute (TTI), Texas A&M University System, FMCSA reported

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<sup>5</sup> OIG Report Number MH-2008-081, "Report on the Scope and Methodology of FMCSA's Review of Canadian/Mexican Compliance with Federal Commercial Motor Vehicle Safety Standards," September 24, 2008.

the results of the review to Congress in an April 2007 report, entitled “The Review of Canadian/Mexican Commercial Vehicle Compliance with FMVSS.”<sup>6</sup>

Our audit found that TTI’s estimates, subsequently formulated based on their sample, were not statistically valid because of how the sample was selected and projected. According to FMCSA, the concerns we raised may be valid, but FMCSA does not expect that the reported findings are significantly affected by them.

TTI estimated that over 90 percent of Mexico-domiciled carrier-owned commercial trucks, trailers, and passenger buses entering the United States at the commercial border crossings complied with FMVSS.<sup>7</sup> That estimate was based on the review of 3,294 sample vehicles at selected border crossings (including 387 buses) between February 13, 2006, and March 24, 2006. TTI estimated that of the sampled vehicles, all complied with FMVSS except 160 trucks, 233 trailers, and 8 buses.<sup>8</sup>

TTI’s estimate included vehicles it examined at the United States-Mexico border to determine whether each vehicle had an FMVSS or Canadian Motor Vehicle Safety Standards certification label affixed to it.<sup>9</sup> If a label was not present, TTI used the vehicle identification number to provide evidence of a vehicle’s date and location of manufacture.<sup>10</sup> TTI counted the vehicle as FMVSS compliant if it met the pre-determined country manufacturing date based on an FMCSA analysis of industry supplied information. TTI then computed statistical projections (estimates) by applying probability formulas to the data. The dates used in the study are presented in the table below.

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<sup>6</sup> Section 4139(b) of the August 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109-59 [2005]), Section 4139(b) required FMCSA to review Canada/Mexico compliance with FMVSS.

<sup>7</sup> According to TTI, its sample and the probability formulas used to make estimates based on sample results provide valid statistical estimates at the 95-percent confidence level. Confidence level is the probability that an interval estimate will include the population parameter. Higher probability means more confidence.

<sup>8</sup> TTI examined 1,573 Mexican-owned trucks and tractors (herein referred to as trucks), 1,334 trailers, and 387 buses.

<sup>9</sup> According to TTI, Mexico does not have a certification label requirement similar to that of the United States. Therefore, no label would be present even if the vehicle was built in the same plant with the same design specifications as an FMVSS compliant vehicle for sale in the United States.

<sup>10</sup> Standard vehicle identification numbers comprised of 17 alphanumeric characters with the first character representing the country of manufacture.

**Table. FMVSS Compliant Country of Manufacture Dates  
Used by TTI in Its Study**

Country of Manufacture	Mexican-Owned Commercial Trucks and Trailers*	Mexican-Owned Commercial Buses*
United States	1981	1981
Canada	1991	1971
Mexico**	1996	None assumed to comply
Source: TTI * Assumed to be FMVSS compliant if manufactured on or after the calendar year cited. **The dates were applied to Mexico manufactured and non-United States and non-Canada manufactured vehicles, which included trucks manufactured in Japan; trailers manufactured in the United Kingdom and Taiwan; and buses manufactured in Germany, Sweden, and Finland.		

Of potential interest for this hearing, the research assumed that any bus examined that did not have a certification label was “manufactured in Mexico” (see table) and was assumed to be non-compliant with FMVSS because little information was available to determine compliance. For trucks, the calendar year 1996 date was used to justify Mexico truck compliance with FMVSS, even though the FMCSA analysis of Mexico manufacturing practices concluded that “...*most* model year 1996 and later CMVs manufactured in Mexico *may* meet the FMVSS.” To support this conclusion, FMCSA used examples of Mexico-manufactured vehicles that could not have complied with FMVSS until after CY 1996. For instance, Mexico did not adopt FMVSS antilock brake system requirements until March 1, 1997.

Also of potential interest, TTI observed instances of non-standard vehicle identification numbers, making it difficult to determine date and country of manufacture. For example, TTI officials reported that at small border crossings, some vehicle identification numbers consisted of seven to nine characters or had characters with no readily apparent relation to standard United States vehicle identification number coding.

Member Hersman, that concludes my statement. We hope the information provided will be helpful to the Board in its investigation and I would be pleased to address any questions that you or NTSB staff might have.

## **EXHIBIT. OFFICE OF INSPECTOR GENERAL NHTSA AND FMCSA RELATED REPORTS AND TESTIMONIES, 2006-2008<sup>11</sup>**

OIG Report Number MH-2008-081, “Report on the Scope and Methodology of FMCSA’s Review of Canadian/Mexican Compliance with Federal Commercial Motor Vehicle Safety Standards,” September 24, 2008.

OIG Report Number MH-2008-059, “Use of Income Derived From the Commercial Driver’s License Information System for Modernization,” July 10, 2008.

OIG Report Number MH-2008-046, “Best Practices For Improving Oversight of State Highway Safety Programs,” March 25, 2008.

OIG Testimony Number CC-2008-049, Testimony before the United States Senate Committee on Commerce, Science, and Transportation, “Cross-Border Trucking Demonstration Project,” March 11, 2008.

OIG Report Number MH-2008-040, “Interim Report on NAFTA Cross-Border Trucking Demonstration Project,” March 10, 2008.

OIG Testimony Number CC-2008-013, Testimony before the United States Senate Committee on Environment and Public Works, Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality, “Effectiveness of Federal Drunk Driving Programs,” October 25, 2007.

OIG Testimony Number CC-2008-007, Testimony before the United States Senate Committee on Commerce, Science, and Transportation, “Challenges Facing the U.S. Department of Transportation, Fiscal Year 2008,” October 18, 2007.

OIG Report Number MH-2007-065, “Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project,” September 6, 2007.

OIG Report Number MH-2008- 062, “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross-Border Trucking Provisions,” August 6, 2007.

OIG Testimony Number CC-2007-078, Testimony before the United States House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, “Motor Carrier Safety: Oversight of High Risk Trucking Companies,” July 11, 2007.

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<sup>11</sup> OIG reports and testimonies can be found at our website [www.oig.dot.gov](http://www.oig.dot.gov).



OIG Testimony Number CC-2007-026, Testimony before the United States Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, “Status of Safety Requirements for Cross-Border Trucking with Mexico Under NAFTA,” March 8, 2007.

OIG Report Number MH-2007-036, “Audit of the National Highway Traffic Safety Administration’s Alcohol-Impaired Driving Traffic Safety Program,” March 5, 2007.

OIG Report Number MH-2006-046, “Significant Improvements in Motor Carrier Safety Program Since 1999 Act But Loopholes For Repeat Violators Needs Closing,” April 21, 2006.

OIG Report Number MH-2006-037, “Oversight of the Commercial Driver’s License Program,” February 7, 2006.